SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1950

No. 436

BOARD OF SUPERVISORS OF LOUISIANA STATE UNIVERSITY AND AGRICULTURAL AND MECHANICAL COLLEGE, ET AL.,

Appellants,

vs.

ROY S. WILSON

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA

STATEMENT AS TO JURISDICTION

The defendants-appellants, having presented this day their petition for appeal, now file this their statement of the basis upon which it is contended that the Supreme Court of the United States has jurisdiction on a direct appeal to review the final order, judgment or decree in question, and should exercise such jurisdiction in this case.

The Statutory Provision Believed to Sustain the Jurisdiction

This appeal, which is applied for on this 30th day of October, 1950, is prosecuted from an interlocutory judgment or decree which grants an interlocutory injunction

restraining the defendants from refusing on account of race or color to admit the plaintiff and others similarly situated and qualified to the Department of Law of Louisiana State University and Agricultural and Mechanical College, which judgment was rendered on the conclusion of the Court that plaintiff was entitled to an interlocutory injunction because the action of the defendants was by an order made by an administrative board or commission which denied the plaintiff a right guaranteed by the Fourteenth Amendment of the Constitution of the United States, the order the validity of which is involved being in the following language, to-wit:

> "Be It Resolved that pursuant to the laws of Louisiana and the policies of this Board the administrative officers are hereby directed to deny admission to the following applicants: Nephus Jefferson, Dan Columbus Simon, Willie Cleveland Patterson, Charles Edward Coney, Joseph H. Miller, Jr., Roy Samuel Wilson, Lloyd E. Milburn, Lawrence Alvin Smith, Jr., James Leo Perkins, Edison George Hogan, Harry A. Wilson, Anderson Williams."

That the right claimed by plaintiff and the rights of defendants are accordingly of substantial importance.

The interlocutory decree here appealed from was entered in the District Court of the United States for the Eastern District of Louisiana, on October 30, 1950, by a statutory Court consisting of one Circuit and two District Judges, specially convoked under the Judicial Code of the United States, and a direct appeal may be taken to the Supreme Court of the United States from a decree granting an interlocutory injunction in such case, under the provisions of U. S. C. A., Title 28, Section 1253.

A copy of the assignment of errors showing the matters in which it is contended that the Court abused its discre-

tion by granting the interlocutory injunction is attached hereto.

It is contended that the Supreme Court of the United States has jurisdiction on a direct appeal to review the final order, judgment or decree in question by virtue of the express provisions last above set forth.

BOLIVAR E. KEMP, JR.,
Attorney General of Louisiana,
By CARROLL BUCK,
First Assistant Attorney General,
H. C. SEVIER,
C. C. BIRD, JR.,
C. V. PORTER,
L. W. BROOKS,
JAMES R. FULLER,
Attorneys for Defendants,
Address: 1106 Louisiana National Bank Building, Baton Rouge, La.

APPENDIX "A"

OPINION

(Number and title omitted) (Filed: October 7th, 1950)

A. P. Tureaud, W. Simpson Tate, Thurgood Marshall, Attorneys for Plaintiff.

Bolivar E. Kemp, Jr., Attorney General of the State of Louisiana; Carroll Buck, First Assistant Attorney General.

Henry C. Sevier, C. C. Bird, Jr.; Taylor, Porter, Brooks, Fuller & Phillips, C. V. Porter, L. W. Brooks, James R. Fuller, Attorneys for Defendants.

Before Borah, Circuit Judge, Christenberry, Chief Judge, and Wright, District Judge.

WRIGHT, District Judge:

By this action, which was filed on September 13, 1950, the plaintiff on his own behalf and on behalf of all Negro citizens of the United States residing in the State of Louisiana similarly situated and affected is seeking injunctions, temporary and final against defendant state officers restraining them from enforcing an order of defendant Board of Supervisors of Louisiana State University and Agricultural and Mechanical College, an administrative board of the State of Louisiana. It is said that plaintiff made timely application for admission as a student to the Department of Law of the Louisiana State University and Agricultural and Mechanical College and complied with all of the rules and regulations governing the admission of students and that although possessing all of the qualifications entitling him to be admitted he has been denied admission pursuant to the order of said Board solely because of his race or color. In these circumstances it is said refusal to admit the plaintiff to the Department of Law of the Louisiana State University and Agricultural and Mechanical College for the purpose of pursuing a course of study he seeks, denies to the plaintiff a right guaranteed by the Fourteenth Amendment to the Constitution of the United States.

Plaintiff's application for an interlocutory injunction was heard by this statutory court of three judges on September 29, 1950. The hearing was upon the pleadings, affidavits and depositions. On the same day the defendants filed a motion to dismiss the within action in so far as it purports to be a class action, and a hearing on this motion was likewise had, whereupon the court took time to consider and now being advised sets forth the findings of fact and conclusions of law which constitute the grounds of its motion.

Findings of Fact

1. The State of Louisiana has established, maintains and operates an institution known as the Louisiana State University and Agricultural and Mechanical College, one of the divisions of which, the Department of Law, has been in existence since the year 1906. The university operates as part of the educational system of the State of Louisiana and is maintained by appropriations from the public funds which are raised by taxation upon the citizens and taxpayers of said state.

2. The defendant Board of Supervisors of Louisiana State University and Agricultural and Mechanical College pursuant to the Constitution and laws of the State of Louisiana exercises over-all authority with reference to the regulation of the institution including the admission of students to the Department of Law.

3. The State of Louisiana has established and as a state function maintains and operates an institution known as Southern University. Admission to Southern University is limited to Negroes. There is and has been since the year 1947 a Department of Law at Southern University maintained and operated to afford an education in law to Negro students.

4. The plaintiff, Roy S. Wilson, is a Negro resident and citizen of Louisiana who possesses all the qualifications for admission to the Department of Law of Louisiana State University and Agricultural and Mechanical College as well as the Department of Law of Southern University.

5. During the period when defendants were considering applications for admission as students to the Department of Law of the Louisiana State University and Agricultural and Mechanical College for the school year 1950-51, and after complying with all of the rules and regulations governing the admission of students to said Department of Law, plaintiff applied for admission as a student. On the 28th day of July 1950 the defendant Board of Supervisors of Louisiana State University and Agricultural and Mechanical College adopted a resolution directing the administrative officers of the university to deny the application of the plaintiff and thereafter the Dean of Louisiana State University Law School advised plaintiff by letter that the State of Louisiana maintains separate schools for its white and colored students and that Louisiana State University does not admit colored students. The resolution of the Board stated that their action was "pursuant to the laws of Louisiana and the policies of this Board."

6. The State of Louisiana maintains separate schools for its white and colored students. It was conceded by both sides at the argument, and the court finds, that there is no statute or provision of the Constitution of the State of Louisiana which by its terms denies to Negroes admission to Louisiana State University and Agricultural and Mechanical College. It is however, the policy of the Board to deny Negro applicants admission to the Department of Law of the Louisiana State University and Agricultural and Mechanical College.

7. The law school of Southern University was established in the year 1947 pursuant to a definite and announced policy of the State Board of Education that there was to be a bona fide law school for Negroes of the highest possible standards and that all things necessary to be done to meet the accreditation standards of the Association of American Law Schools and the Council of Legal Education and Admission to the Bar of the American Bar Association should be done. However, the policy of the State Board of Education has not in this comparatively short period of time been effectuated and the Law School of Southern University does not afford to plaintiff educational advantages equal or sub-

sufficient cause to issue that he might receive it admitted to the Department of Law of the Louisiana State University and Agricultural and Mechanical College.

6. Louisiana State University was established in 1860 and has been in continuous operation since that time except for a short period during the Civil War when it was closed because of hostilities. The present value of its plant is $11,741,641.61. Louisiana State University is a full and regularly accredited by every recognized accrediting agency in the country. It has twelve colleges and several divisions within those colleges and offers full undergraduate degrees and professional degrees, masters degrees and doctors degrees.

8. Southern University was established in 1880 and its plant is valued at about two and one half million dollars. Southern University is not a member of the Southern Association of Colleges and Secondary Schools but it enjoys the highest rating given by the Association. Except for the Law School, Southern is merely a college and not a university.

10. The showing made raises serious questions under the Federal Constitution and discloses that enforcement of the order pending final hearing would inflict irreparable damages upon the plaintiff.

Conclusions of Law

1. This suit arises under the Constitution and laws of the United States, and seeks redress for the deprivation of civil rights guaranteed by the Fourteenth Amendment and this court is vested with jurisdiction. 28 U. S. C. § 1343; Act of April 20, 1871, Chapter 22, section 1, 17 Stat. 13, 8 U. S. C. § 43; Act of May 31, 1870, Chapter 114, section 16, 16 Stat. 144, 8 U. S. C. § 41; 28 U. S. C. § 2281. Since an application for an interlocutory injunction against the order of a State administrative board is sought on the grounds of unconstitutionality of the order, the subject matter is properly cognizable by a three judge court under Section 2281 of the Judicial Code, 28 U. S. C. § 2281. *Oklahoma Natural Gas Company* v. *Russell*, 261 U. S. 290.

2. This action is properly brought as a class action under Rule 23(a) of the Federal Rules of Civil Procedure. Defendants' motion to dismiss is accordingly denied.

3. The class which plaintiff represents is composed of the Negro citizens of the state who possess the requisite qualifications for admission to the Department of Law of the Louisiana State University and Agricultural and Mechanical College. We hold, in conformity with the equal protection clause of the Fourteenth Amendment, that the plaintiff and all others similarly qualified and situated are entitled to educational advantages and opportunities available within the state, at the same time, upon the same terms and substantially equal to those which the state provides and makes available to other residents and citizens of the state. *Sipuel v. Board of Regents of University of Oklahoma, et al.*, 332 U. S. 631; *Missouri ex rel. Gaines v. Canada, Registrar of the University of Missouri, et al.*, 305 U. S. 337; *McLaurin v. Oklahoma State Regents*, 339 U. S. 637; *Sweatt v. Painter*, 339 U. S. 629.

4. The court is of the opinion that the order of the defendant Board of Supervisors of Louisiana State University and Agricultural and Mechanical College denying admission to the plaintiff to the Department of Law solely because of his race and color denies a right guaranteed to plaintiff by the Fourteenth Amendment and that enforcement of the order, pending final hearing, would inflict irreparable damages upon the plaintiff.

It accordingly follows from what has been said that the situation presented, in our opinion, calls for the issuance of an interlocutory injunction. A decree will accordingly be entered for the plaintiff and its terms may be settled after notice.

New Orleans, Louisiana,
October 7th, 1950.

Office Supreme Court, U. S.
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MOTION TO DISMISS OR AFFIRM

A. P. TUREAUD,
THURGOOD MARSHALL,
Counsel for Appellee.

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